

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JOANNE M. ROYER,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF  
MASSACHUSETTS, INC., BLUE CROSS  
BLUE SHIELD LONG-TERM  
DISABILITY BENEFIT PLAN, a/k/a  
OMNIBUS WELFARE BENEFITS  
PLAN, KEMPER NATIONAL  
SERVICES, INC., BROADSPIRE  
SERVICES, INC., AND SHELDON  
MYERSON, M.D.,

Defendants.

**CIVIL ACTION NO:  
NO: 05-CV-10448-GAO**

**DEFENDANTS' MOTION TO DISMISS COUNTS I AND II  
OF THE PLAINTIFF'S SECOND AMENDED COMPLAINT**

Kemper National Services, Inc. ("KNS"), Broadspire Services, Inc. ("Broadspire") and Sheldon Myerson, M.D. ("Dr. Myerson"), defendants in this matter, move to dismiss Counts I and II of the plaintiff's Second Amended Complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and as grounds therefore, state as follows:

The plaintiff has filed a multi-count second amended complaint against various defendants seeking short-term and long-term disability benefits from plans sponsored by Blue Cross Blue Shield of Massachusetts ("BCBS"). KNS and Broadspire were claims administrators for the STD and LTD plans. The subject complaint does not (and cannot) allege that either KNS or Broadspire funded plan benefits or were liable to pay any benefits under the terms of the subject ERISA Plan. Dr. Myerson was an independent peer reviewer who rendered opinions to

KNS and Broadspire regarding medical records submitted to him for review. Dr. Myerson likewise did not fund any plan benefits, nor was he liable for the payment of any benefits under the terms of the subject ERISA Plan.

For reasons stated more fully in the Defendants' Memorandum in Support of Their Motion to Dismiss Counts I and II of the Plaintiff's Second Amended Complaint, which is filed herewith, neither KNS, Broadspire nor Dr. Myerson are proper defendants in an action seeking ERISA Plan benefits. As such this Court should dismiss Counts I and II as to those defendants.

Therefore, because KNS, Broadspire and Dr. Myerson are not proper defendants in an action for ERISA Plan benefits, this Court should dismiss Counts I and II of the plaintiff's second amended complaint against those defendants pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

**CERTIFICATION UNDER LOCAL RULE 7.1(A)(2)**

Counsel for the defendants, David F. Schmidt, conferred with plaintiff's counsel on August 4, 2005 concerning the issues presented by this motion and have attempted, without success, to resolve or narrow the issue.

**REQUEST FOR ORAL ARGUMENT**

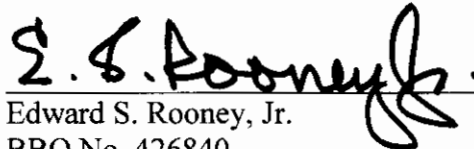
Defendants believe that oral argument may assist the court and wish to be heard and therefore request oral argument.

Respectfully submitted,

KEMPER NATIONAL SERVICES, INC.,  
BROADSPIRE SERVICES, INC. and SHELDON  
MYERSON, M.D.

By its attorneys:

DATED: August 4, 2005



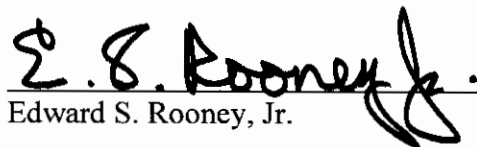
Edward S. Rooney, Jr.  
BBO No. 426840  
ECKERT SEAMANS CHERIN  
& MELLOTT, LLC  
One International Place, 18<sup>th</sup> Floor  
Boston, MA 02110  
(617) 342-6800

OF COUNSEL:

David F. Schmidt  
CHITTENDEN, MURDAY & NOVOTNY LLC  
303 West Madison Street, Suite 1400  
Chicago, IL 60606  
312-281-3600

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by overnight mail this 4<sup>th</sup> day of August, 2005.



Edward S. Rooney, Jr.